

From: [Salinas, Amy](#)
To: [Moore, Gary](#)
Subject: RE: Authority to discharge
Date: Wednesday, September 03, 2014 7:21:00 AM

I also spoke with Mark Peycke yesterday and he said if the point of discharge originated on-site, even if the discharge goes off-site, then a permit would not be needed. He did mention that you need to comply with the substantive part of it, but you do not need an actual permit. I hope this helpful as well.

Amy

From: Moore, Gary
Sent: Tuesday, September 02, 2014 5:53 PM
To: Salinas, Amy
Subject: FW: Authority to discharge
See the NPDES exclusion. I think this will work.
Thanks

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From: Bernier, Roberto
Sent: Tuesday, September 2, 2014 5:03 PM
To: Moore, Gary
Subject: Authority to discharge

Gary below are a couple of things that I researched, the NPDES exclusion is good. These are aside from the regular removal authority under CERCLA to do whatever is necessary. . . same under CWA haz substance.

§1342 – NPDES:

40 CFR 122.3(d) - **EXCLUSIONS**. The following discharges **do not require NPDES** permits: . . .

(d) Any discharge in compliance with **the instructions of an On-Scene Coordinator** pursuant to 40 CFR part 300 (NCP) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

NCP:

40 CFR 300.415(b)(1) - At any release, . . . , where the lead agency makes the determination, based on the factors in paragraph (b)(2) of this section, that there is a threat to public health or welfare of the United States or the environment, the lead agency **may take any appropriate removal action to abate, prevent, minimize, stabilize, mitigate, or eliminate the release or the threat of release.**

(b)(2)(v) - Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; *the release being going into the neighborhood instead of thinking that the release is the discharge to the storm sewer*

40 CFR 300.415(e)(5) - The following removal actions are, as a general rule, appropriate . . . however, this list is not exhaustive and is not intended to prevent the lead agency from taking any other actions deemed necessary under CERCLA, CWA section 311, or other appropriate federal or state

enforcement or response authorities,

(5) - Using chemicals and other materials to retard the spread of the release or to mitigate its effects—where the use of such chemicals will reduce the spread of the release; *activated carbon being the chemical or material to retard . . .*

40 CFR 300.430(f)(1)(ii)(C)(2) An alternative that does not meet an ARAR under federal environmental or state environmental or facility siting laws may be selected under the following circumstances:

(2) Compliance with the requirement will result in greater risk to human health and the environment than other alternatives;